VIKING RESOURCES CORP.

IBLA 82-613 Decided April 30, 1984

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting competitive oil and gas lease offer C 33321.

Affirmed.

1. Administrative Authority: Laches--Estoppel--Laches

   The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

2. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

   The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, notwithstanding any immaterial defects in BLM's analysis, where an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value.

APPEARANCES: Lynda G. Faulds, Jan Jaeger, and Margaret E. Auld, Viking Resources Corporation, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Viking Resources Corporation has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), rejecting as inadequate its bid of $4.50 per acre for parcel 67 at the lease sale held on July 30, 1981. 1/ The decision was based on a recommendation by the Department's technical experts that the minimum acceptable bid should be $25 per acre on the basis of comparable sales data and a risk-weighted present worth analysis.

1/ Parcel 67 consists of 80 acres in the Vallery Field described as: T. 3 N., R. 59 W., sixth principal meridian, sec. 23, E 1/2 SE 1/4.

In its statement of reasons, appellant contends that there is no indication of how BLM arrived at the $25 per acre figure for the minimum acceptable bid, that the computer data is inconclusive because no results are shown, and that the "completions" to the north mentioned in BLM's analysis are not identified. Appellant also asserts that five dry holes "within a mile of the lease" were not considered. Further, appellant states that two of its own leases, acquired in September 1981 for $5 and $7 per acre, are not mentioned in the list of comparables.

By order dated October 28, 1983, we directed BLM to file an answer in response to appellant's statement of reasons. BLM's answer was filed with the Board and appellant responded to BLM's answer. 2/

[1] Appellant also contends that BLM delayed unduly when it issued the decision rejecting appellant's bid nearly 7 months after the sale. 3/ Appellant also faults BLM for failing to respond properly to the Board's order requiring response to appellant's statement of reasons. These objections, however, provide no basis for reversal of BLM's decision.

While the delay in the BLM decision was unfortunate, it is well established that the authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties. 43 CFR 1810.3(a); James H. W. Tseng, 69 IBLA 387 (1983); James N. Tibbals, 58 IBLA 42 (1981).

Before considering appellant's substantive objections, it is helpful to set forth the legal principles applied in our review of BLM's decision. The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases; and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977).

2/ BLM failed to serve a copy of its answer upon appellant as directed by our Oct. 28 order. The Board completed service by filing a copy directly with appellant. However, appellant has complained that the copy of Attachment A to BLM's memorandum is illegible. The illegible document is a copy of BLM's "Recommendation for Rejection of Bid on Parcel No. 67 in the July 30, 1981, Oil and Gas Lease Sale." This is the same document that was already in the lease file inspected by appellant at the time appellant filed its appeal. Because appellant has already seen this document, as is evidenced by appellant's express reference to it in its initial statement of reasons, we find that appellant's ability to file a response to BLM's submission was not prejudiced by the illegibility of attachment A.

3/ The decision herein is undated. Documents in the file indicate, however, that it was issued in the last half of February 1982.

In several decisions we have stressed the need for BLM to justify its determination of minimum acceptable bid. For example, in Southern Union Exploration Co., 51 IBLA 89, 92 (1982), we indicated that such an explanation was necessary to provide the bidder with "some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board." Nevertheless, these rulings do not absolve appellant of its affirmative obligation of establishing a basis for a determination that there was error in the decision appealed from, i.e., that appellant's bid represents the fair market value. We note that appellant did not rely on BLM's justification when formulating its bid, and therefore appellant should be able to provide justification for the reasonableness of its own bid. 4/

In this case, appellant has failed to present evidence that would affirmatively show that BLM's determination of the minimum acceptable bid was in error. It argues that two leases valued at $5 and $7 per acre should be considered as comparable. Even if the $25 per acre minimum acceptable bid were so grossly erroneous as to be three to four times the actual fair market value of the land, appellant's $4.50 bid would still be less than the minimum acceptable bid and and would be rejected. Appellant's bid is lower than the lowest bid appellant claims to be comparable.

[2] The Department is entitled to rely on the reasoned analysis by its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. L. B. Blake, 67 IBLA 103 (1982). Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, that decision will not be reversed, even though the determination may be subject to reasonable differences of opinion. See Kerr-McGee Corp. v. Watt, 517 F. Supp. 1209, 1213-14 (D.D.C. 1981). "Inevitably, some bid rejection decisions involve close calls." Id. This appeal, however, does not involve a "close call." Appellant has provided absolutely no support for the conclusion that its bid is a reasonable reflection of fair market value.

We have noted in the past that the fair market value is the amount in cash, or in terms reasonably equivalent to cash, for which a knowledgeable owner would grant to a knowledgeable user the right to use the land where both parties are willing but not obligated to engage in the transaction. See Northwestern Colorado Broadcasting Co., 49 IBLA 23 (1980); B & M Service, Inc., 48 IBLA 233 (1980). Although the Government identifies the minimum acceptable bid in an effort to ensure that it receives fair market value for a particular parcel, a minimum acceptable bid is conceptually discrete from fair market value. Because the concept of fair market value involves terms which are mutually agreed upon by both the buyer and the seller, an unaccepted bid from a single party carries little probative weight as evidence of fair

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4/ Requiring an appellant to submit his own analysis of value in support of the adequacy of his bid is consistent with the Board's practice in other appeals from BLM determinations of fair market value. In an appeal involving an appraisal of a right-of-way for a communication site, we noted that in the absence of evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Dwight L. Zundel, 55 IBLA 218, 222 (1981). We believe that a similar requirement is appropriate here.

market value. The concept implicitly recognizes that a prudent seller would retain his property if no adequate offer is received. One court noted: "[I]t is not unreasonable to reject a problem bid when too few bids are received on that tract." Superior Oil Co. v. Watt, 548 F. Supp. 70, 74 (D. Del. 1982).

The difference between fair market value and the minimum acceptable bid is illustrated by the results of the sale of parcels offered at the same time as the one involved in the instant appeal. The high bids for the vast majority of parcels were substantially higher than the minimum acceptable bids. BLM cites this fact as an indication of the conservativeness of its methodology in determining the minimum acceptable bids so that the resulting figure tends to understate "fair market value." In considering the probative significance of appellant's bid as evidence of fair market value, we note that parcel 67 was not the only parcel appellant valued at $4.50 per acre. Appellant also bid that same amount for parcels 29, 30, 31, 32, 33, 34, 35, and 66. Appellant's $4.50 bids were consistently the lowest received for these parcels. The following table sets forth the high, average, and low bid for the parcels:

Parcel No.	High Bid	Average Bid	Low Bid (Viking bid)	Number of bids
29	$264.75	$106.34	$4.50	8
30	$313.13	$113.45	$4.50	8
31	$261.75	$110.90	$4.50	8
32	$261.75	$ 78.39	$4.50	6
33	$261.75	$105.33	$4.50	6
34	$261.75	$ 92.91	$4.50	7
35	$261.75	$ 81.12	$4.50	6
66	$ 28.15	$ 16.33	$4.50	2

The evidence set forth in the above table clearly establishes that Viking had consistently underestimated the fair market value of the tracts for which it had submitted bids. It also shows rather graphically why a single bid generally cannot be afforded much significance as evidence of fair market value.

We now turn to consideration of BLM's response to appellant's statement of reasons. BLM's response provides general information on the composition of the professional staff preparing the minimum acceptable bid determination, a general description of the Department's purpose in preparing such a determination as well as a description of the process these experts employed in reaching their conclusion as to the minimum acceptable bid. The report also addresses appellant's specific contentions with respect to the accuracy of the information used in making the determination:

> The appellant correctly states that "the comparable lease prices . . . [do] not show the Federal lease assigned to Viking Resources in 2N-59W, s 3: NW; s 4: NE for $5.00 per acre in September 1981; or a fee lease Viking Resources purchased in 2N-55W, s 17: N 1/2, SW for $7.00/acre." The first lease transaction took place three months after the sale (i.e., "the property

> should be valued as of the time of taking . . .," page 6, "Uniform Appraisal Standards") and therefore the information was not available at the time of evaluation. The second lease is located over 20 miles from the subject parcel. It is the opinion of the EES that such a distance violates established basic rating elements to be considered in comparison of sales transactions which include (1) location and (2) physical similarities and dissimilarities (i.e., geology).
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> Attachment A, "The Recommendation for Rejection of Bid on Parcel No. 67 in July 30, 1981 Oil and Gas Lease Sale," lists seven comparable lease sales which were used in the presale evaluation as well as the post-sale evaluation. The seven sales range in value from $11.00 to $133.00 per acre. These values are significantly higher than the $4.50 per acre offered by Viking Resources for Parcel 67.

(Memorandum dated Dec. 16, 1983, at 2). Appellant only disputes BLM's characterization of appellant's first transaction as occurring "three months after the sale," but admits that the executed assignment was not forwarded to BLM for approval until September 17, 1981, long after the presale determination had been made. Even if these transactions were to be taken into consideration, they do not support the conclusion that appellant's bid was a reasonable reflection of fair market value. 5/ BLM's postsale evaluation also considered one other transaction:

> The post-sale evaluation also incorporated information from Parcel 66. This parcel, located only 3/4 mile west, has a very similar geologic setting as indicated in Attachment B. Parcel 66 received two bids; one by the appellant for $4.50 per acre and a high bid of $28.15 per acre. It is the opinion of the EES [Economic Evaluation Staff] that the high bid received for Parcel 66 further substantiates the $25.00 per acre MAB originally estimated through the analysis of comparable sales and the discounted cash flow. Parcel 66 is in fact the most comparable sale from the standpoint of (1) time interval, (2) motivation of sales transactions, (3) location, (4) similarity of highest and best use, (5) physical similarities, and (6) economic similarities.

5/ BLM filed a further response in this appeal, indicating that the lease for which appellant paid $5 per acre also reserves a 4 percent overriding royalty. In order to provide a figure comparable to a cash bonus bid, the present cash value of the override must be added. BLM estimates that the value of the first year overriding royalty for appellant's lease is $614.18 per acre.

Appellant has responded that the override has no true value unless a well has been drilled and becomes a commercial producer, and appellant believes that the odds against such an occurrence are rather significant. The override is neither insignificant nor irrelevant as a factor when assessing the comparability of leases. Furthermore, even if we were to view this transaction in a light most favorable to appellant, this single transaction does not outweigh the other evidence that supports rejection of appellant's bid.

(Memorandum dated Dec. 16, 1908, at 3-4). The Department may properly reject a bid that is well below the amount offered for adjacent tracts. Kerr-McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975).

As for appellant's assertion that BLM failed to take into consideration the existence of dry holes near the parcel, BLM responds:

> The appellant questions whether or not the reserves were reduced as a result of dry holes near the parcel. The number of dry holes in the vicinity was considered in the risk analysis which is typically applied to the calculated present worth and not to the reserves.
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> The risk analysis applies a success ratio to the present worth calculated by the DCF [discounted cash flow] computer program. At this point in the evaluation, the number of dry holes in the vicinity is considered. For Parcel 67, a circular area with a radius of 1 mile from the center of the parcel was used. This area includes three producing wells and four dry holes which represent a success ratio of 43 percent. In taking a conservative approach, the risk was further reduced to 25 percent which corresponds to an estimated value of $75.00 per acre. This estimate of value was included with other presale information used in estimating an MAB [minimum acceptable bid].

(Memorandum dated Dec. 16, 1983, at 3).

In conclusion, appellant has done little more than raise questions concerning BLM's analysis. We believe that these questions were fully answered in the memorandum BLM filed in this appeal. Even if these questions were not completely resolved by BLM's answer, we must note that appellant has submitted nothing in the nature of geological data or comparable sales data that would support a conclusion that the $4.50 per acre bid submitted by it represents the fair market value for parcel 67.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge